

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 96-183

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Under s. 445.125 (3m) (j) 2., Stats., the Funeral Directors Examining Board may promulgate rules establishing standards for marketing practices for a burial agreement funded with the proceeds of a life insurance policy, including standards for telephone solicitation of prospective purchasers. The rules promulgated under this subsection may “prohibit a method of telephone solicitation” if the Examining Board determines that the prohibition is “necessary to protect the public.” Section FD 6.10 prohibits, by live voice or using an automatic telephone dialing system or an artificial pre-recorded voice, contacts for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any residential telephone line without the “prior express written consent” of the called party. Prohibitions are also included for business telephone lines and for telephone lines of any guest room or patient room of a hospital, health care facility, elderly home or similar establishment.

The board has the authority to prohibit this form of contact, under ss. 445.125 (3m) (j) 2. and 445.12 (3g) (a) and (b), Stats. However, the board should include in the analysis that it has made a determination that the prohibition is necessary to protect the public as is required by the statute.

2. Form, Style and Placement in Administrative Code

a. In s. FD 6.01, the notation “ch. FD 6” should be replaced by the phrase “this chapter.”

- b. In s. FD 6.02, the introduction should be replaced by the phrase “In this chapter;”.
- c. In s. FD 6.02 (1), the material beginning with the phrase “who may” is substantive and should not be contained in the definition of the term “agent.” [See s. 1.01 (7) (b), Manual.]
- d. In s. FD 6.05 (4), reference is made to “an educational training.” The reference should be “an educational training program.”
- e. Section FD 6.06 (1) (c) states that the provider of the program must “agree to monitor continuous attendance of participants” and furnish each participant evidence of having attended and completed the program at the location of the program. The term “program provider” is defined in s. FD 6.02 (5) and reference should be made to that term; the term “evidence of attendance” is also defined by s. FD 6.02 (4). This provision could be rewritten to state: “The program provider agrees to monitor the continuous attendance of participants and to furnish each participant with evidence of attendance.”
- f. In s. FD 6.07 (1) (k), “board” in the disclosure statement should be capitalized.
- g. Section FD 6.07 is divided into sub. (1) (which is further subdivided) but there is no sub. (2). This does not comply with s. 1.03 (intro.), Manual, which states that when any section or part of a section is divided into smaller subunits, at least two subunits shall be created. Consequently, the introduction should be unnumbered and pars. (a) to (k) should be renumbered as subs. (1) to (11).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. FD 6.02 (1), it appears that the phrase “operator of a” should precede the phrase “funeral establishment.”
- b. In s. FD 6.03 (1) (b), “with” preceding “whom” should be deleted.
- c. Section FD 6.03 and the following sections are unclear in organization and logical progression.
 - (1) Under s. FD 6.03, the licensed funeral director is required to submit an application. (Subsequently, this is referred to as the agent’s application for registration.) Under s. FD 6.08, the agent’s contract is to be sent along to the board with the agent’s application. However, the registration requirements in s. 6.03 (1) do not state that the application must include a copy of the contract.
 - (2) Under s. FD 6.03 (1) (c), the person must submit evidence satisfactory to the board that the agent has completed the training requirements as provided in s. FD 6.05. Section FD 6.05 (1) provides that before an agent may sell or solicit the sale of a burial agreement funded by life insurance proceeds, he or she must complete an approved educational training program. It would be clearer to require the application to include the evidence of course

completion and to provide that an agent may not sell or solicit unless he or she has been registered by the board.

d. In s. FD 6.03 (3), the use of the word “may” is unclear. If an applicant has filed a complete application and has paid fees, should the word “may” be replaced by the word “shall” in order to require the board to issue a registration card?

e. In s. FD 6.04, it appears that the word “owner” should be replaced by the word “operator” in order to be consistent with the statutes and the remainder of the rule.

f. Section FD 6.05 (4) states that credit will be given to an agent if the program has been approved by the board and if the agent provides evidence of attendance satisfactory to the board. However, sub. (5) states that after completing any required training program, the agent “shall take and successfully pass a comprehensive examination administered by the program provider.” What is the effect of failure to successfully pass a comprehensive examination? Is it intended that credit will be given if the person both submits proof of attendance and successful completion of a required training program? Or is it intended that in order to obtain approval as an educational training program that the program must provide for a comprehensive examination on the training program that is administered by the program provider and that credit for attendance will be given to an agent only after the person has completed both the attendance and the examination requirement? Also, in sub. (4), the phrase “under s. FD 6.06” should be inserted after the first occurrence of the word “board.”

g. Section FD 6.07 is confusing. Under s. 445.125 (3m) (d), (e) and (f), Stats., the contents of burial agreements are specified. In addition, under s. 445.125 (3m) (g), Stats., the agent is required to disclose in a writing that is “clear and conspicuous” certain information to the applicant. The provisions in s. FD 6.07 combine in one document (the burial agreement) both the contents of the written burial agreement specified in s. 445.125 (3m) (d) to (f), Stats., and the disclosures that are required to be made in the separate writing by s. 445.125 (3m) (g), Stats.